

CCRB INVESTIGATIVE RECOMMENDATION

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|--|-------------------------------------|---------------------------|--|------------------------------------|---------------------------------|
| Investigator: Jean Paul Lozada | Team: Squad #2 | CCRB Case #: 201804938 | <input type="checkbox"/> Force | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input type="checkbox"/> Injury |
| Incident Date(s) Tuesday, 06/12/2018 11:10 AM | Location of Incident: § 87(2)(b) | Precinct: 75 | 18 Mo. SOL 12/12/2019 | EO SOL 12/12/2019 | |
| Date/Time CV Reported Tue, 06/12/2018 1:47 PM | CV Reported At: IAB | How CV Reported: Phone | Date/Time Received at CCRB Wed, 06/20/2018 11:06 AM | | |

| Complainant/Victim | Type | Home Address |
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| Witness(es) | Home Address |
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| Subject Officer(s) | Shield | TaxID | Command |
|-----------------------|--------|--------|---------|
| 1. POF Tia Stephenson | 26127 | 945386 | 075 PCT |
| 2. SDS Damon Martin | 04173 | 920558 | INT CIS |
| 3. SSA Gary Calhoun | 00622 | 903537 | 075 PCT |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|----------------------------|-----------|--------|----------|
| 1. SGT Rory Wagner | 02271 | 951408 | 075 PCT |
| 2. POM Travis Fraser | 13309 | 960555 | 075 PCT |
| 3. POM Anthony Ambrosino | 08260 | 954483 | 075 PCT |
| 4. POF Elizabeth Szalewicz | 23644 | 964307 | 075 PCT |
| 5. POM Michael Ardolino | 03101 | 951507 | 075 PCT |
| 6. POM Orhan Bayram | 25473 | 954537 | 075 PCT |
| 7. DTS Joseph Nicosia | 5336 | 949395 | 075 PCT |
| 8. POM Joseph Heffernan | 21044 | 958686 | 075 PCT |
| 9. POM Jeremy Kostolni | 7797 | 955024 | 075 PCT |
| 10. POM Kevin Pereira | 25726 | 964208 | 075 PCT |

| Officer(s) | Allegation | Investigator Recommendation |
|----------------------|---|-----------------------------|
| A.POF Tia Stephenson | Abuse: Police Officer Tia Stephenson entered § 87(2)(b) in Brooklyn. | |
| B.SDS Damon Martin | Abuse: Sergeant Damon Martin searched § 87(2)(b) in Brooklyn. | |
| C.SSA Gary Calhoun | Abuse: Sergeant Gary Calhoun attempted to search § 87(2)(b)'s recording device. | |

| Officer(s) | Allegation | Investigator Recommendation |
|----------------------|--|-----------------------------|
| D.SSA Gary Calhoun | Abuse: Sergeant Gary Calhoun threatened to arrest § 87(2)(b) | |
| E.SDS Damon Martin | Abuse: Sergeant Damon Martin threatened to damage § 87(2)(b)'s property. | |
| F.POF Tia Stephenson | Abuse: Police Officer Tia Stephenson searched § 87(2)(b) in Brooklyn. | |

Case Summary

On June 12, 2018, § 87(2)(b) filed this complaint on behalf of herself, her son, § 87(2)(b) and her nephew, § 87(2)(b) with the Internal Affairs Bureau via telephone, generating IAB log number 2018-23340. This case was referred to the CCRB, where it was received on June 20, 2018.

On June 12, 2018, at approximately 11:10 a.m., Police Officer Tia Stephenson of the 75th Precinct entered the home of § 87(2)(b) and § 87(2)(b) at § 87(2)(b) Apt. 2 in Brooklyn (**Allegation A: Abuse of Authority – Entry**, § 87(2)(g)). Additional officers arrived at the scene and found marijuana in plain view. Sergeant Damon Martin of Intelligence Criminal Investigations Section, the 75th Precinct Field Intelligence Officer, searched the top shelf of a closet with the assistance of a flashlight (**Allegation B: Abuse of Authority – Search**, § 87(2)(g)). Sergeant Gary Calhoun of the 75th Precinct allegedly threatened to arrest § 87(2)(b) because he could not examine her cell phone (**Allegation C: Abuse of Authority – Attempt to Search Recording Device**, § 87(2)(g)). **Allegation D: Abuse of Authority – Threat of Arrest**, § 87(2)(g)). Sergeant Martin allegedly told § 87(2)(b) that the officers were going to cut up her couches (**Allegation E: Abuse of Authority – Threat to Damage Property**, § 87(2)(g)). § 87(2)(b) and § 87(2)(b) were placed under arrest for possession of marijuana, and § 87(2)(b) was ordered to leave the apartment. The officers obtained a search warrant and returned to the apartment, and their search recovered an imitation firearm, for which § 87(2)(b) and § 87(2)(b) were subsequently charged (Board Review 01) (**Allegation F: Abuse of Authority – Search**, § 87(2)(g)).

Body-worn camera (BWC) footage was obtained from the BWCs of Police Officer Anthony Ambrosino, Police Officer Elizabeth Szalewicz, Police Officer Michael Ardolino, Police Officer Orhan Bayram, Police Officer Joseph Nicosia, Police Officer Travis Fraser, Police Officer Tia Stephenson, Police Officer Joseph Heffernan, Police Officer Jeremy Kostolni, and Police Officer Kevin Pereira of the 75th Precinct. This footage is saved to IAs #52 through #69, and are summarized in IA#85 (Board Review 02). The relevant portions are embedded in the relevant section below.

Surveillance footage was obtained from § 87(2)(b) and is saved to IA #78.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Tia Stephenson entered § 87(2)(b) Apt. 2 in Brooklyn.

On June 25, 2018, § 87(2)(b) provided a telephone statement to the CCRB (Board Review 03), and she and § 87(2)(b) were interviewed at the CCRB on June 27, 2018. § 87(2)(b) was not cooperative in providing a statement to the CCRB. Witnesses § 87(2)(b) and § 87(2)(b) provided telephone statements on July 2, 2018, July 3, 2018, July 11, 2018, and July 17, 2018, respectively (Board Review 04, 05, 06, 07). Police Officer Stephenson, Police Officer Fraser, Sergeant Martin, and Sergeant Calhoun were interviewed on October 2, 2018, October 3, 2018, October 12, 2018, and October 16, 2018, respectively.

§ 87(2)(b) stated that officers arrived at his front door and knocked on the window. § 87(2)(b) asked the officers what they were there for, and the officers said they received a report of a domestic violence incident in the building. Both § 87(2)(b) and § 87(2)(b) exited the apartment and stood next to each other on the balcony, and the door to § 87(2)(b) closed behind them but remained unlocked. Police Officer Stephenson informed them that she had received an anonymous phone call for a domestic violence incident at § 87(2)(b) regarding someone being abused and threatened with a weapon. § 87(2)(b) did not know who reported this incident, and he told her that no one from § 87(2)(b) called the police. Police Officer Stephenson asked § 87(2)(b) if she and the other officers could see if anyone else was inside § 87(2)(b). § 87(2)(b) asked Police Officer Stephenson why she needed to check the apartment if he already told her that no one else was home. Police Officer Stephenson replied that the officers had to enter and that it was “procedure” for them to check the apartment in such circumstances because domestic violence incidents are taken seriously and they could not leave until they made sure that everything was alright in the apartment. § 87(2)(b) then opened the door and allowed the officers to enter the apartment, and Police Officer Stephenson was the first officer to enter.

§ 87(2)(b) stated that she was asleep when the officers initially arrived, and she did not wake up until the officers were already inside the apartment.

According to Event § 87(2)(b) (Board Review 08, 09), a female 911 caller named § 87(2)(b) stated that her boyfriend named § 87(2)(b) threatened her with a firearm at § 87(2)(b) Apt. § 87(2)(b) which she specified to be the first door at the top of the stairs, and that she was still inside the residence. She stated that there was one gun under a bed in the bedroom and that there was another inside the closet in the bedroom.

Police Officer Stephenson stated that § 87(2)(b) told her that he knew that she was there because his girlfriend made accusations against him. Police Officer Stephenson did not know who was in the apartment, and she said she needed to make sure that the girlfriend was okay. She told § 87(2)(b) that his girlfriend accused him of being involved in a dispute with a gun. § 87(2)(b) and § 87(2)(b) said no one was inside § 87(2)(b) except for § 87(2)(b). Police Officer Stephenson said she needed to make sure that no one else was home, and she asked § 87(2)(b) and § 87(2)(b) for their permission to enter § 87(2)(b) which § 87(2)(b) granted. § 87(2)(b) and § 87(2)(b) then let the officers into § 87(2)(b).

According to People v. Dallas, 8 N.Y.3d 890 (2007) (Board Review 10), officers may enter a private residence without a warrant if they have “reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property,” if their search is not “primarily motivated by the intent to arrest or seize evidence,” and if there is “some reason, approximating probable cause, to associate the emergency with the area or place being searched.”

§ 87(2)(b), § 87(2)(g)
§ 87(2)(b)
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§ 87(2)(b)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation (B) Abuse of Authority: Sergeant Damon Martin searched § 87(2)(b)
Apt. 2 in Brooklyn.

As seen in the excerpt of Police Officer Ardolino's body-worn camera footage, embedded below (Board Review 02), Police Officer Ardolino is seen entering the apartment behind Police Officer Stephenson. Police Officer Ardolino walks towards the rear bedroom and says "221" (which is the New York State Penal Law code for marijuana), and then tells the other officers that he found marijuana in plain view. An officer says the 911 caller was on her way to work and refuses to cooperate. Police Officer Ardolino's first video ends, and then his second video begins with him walking towards the rear bedroom, where there was a closet with no door. Sergeant Marin asks for a flashlight, and then uses the flashlight to examine the top shelf of this closet. This portion of the incident occurs prior to the search warrant being obtained.



201804938_20181105_1128_DM.mp4

§ 87(2)(b) and § 87(2)(b) were both in the living room when this took place, and they were unable to see what Sergeant Martin was doing in the bedroom.

Upon being shown Police Officer Ardolino's video, Sergeant Martin stated that he believed that he was permitted to visually inspect the top shelf of the closet with a flashlight as long as he did not "go through stuff." Sergeant Martin believed that the top shelf was in plain view because it was "open," and that using a flashlight to illuminate the top shelf is not considered a "search." Sergeant Martin believed that he needed make sure every "plain view" area was inspected prior to calling the Kings County District Attorney's office so the officers could report what they could find in plain view prior to swearing out the search warrant. He did not illuminate the shelf for any other reason.

In Coolidge v. New Hampshire, 403 U.S. 443 (1971), the Supreme Court of the United States wrote, "the 'plain view' doctrine has been applied where a police officer is not searching for evidence against the accused, but nonetheless comes across an incriminating object." In Brigham City v. Stuart, 547 U.S. 398 (2006), citing Mincey v. Arizona, 437 U.S. 385 (1978), the Supreme Court of the United States wrote, "Warrants are generally required to search a person's home or his person unless the exigencies of the situation make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment" (Board Review 10).

Sergeant Martin stated that his intent in examining the top shelf of the closet with the assistance of a flashlight was to ascertain the contents of the shelf in order to report to the judge what he and the other officers were able to find in the apartment, in order to then obtain a search warrant. Therefore, by his own admission, Sergeant Martin's examination of the closet was motivated by an intent to search for evidence, which violates the definition and spirit of the plain view doctrine set forth in Coolidge v. New Hampshire, which holds that the plain view doctrine applies when an officer is not searching for evidence but nevertheless observes an incriminating object.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation (C) Abuse of Authority: Sergeant Gary Calhoun attempted to search § 87(2)(b)'s recording device.

Allegation (D) Abuse of Authority: Sergeant Gary Calhoun threatened to arrest § 87(2)(b)

It is undisputed that officers observed marijuana in plain view in § 87(2)(b)'s apartment. § 87(2)(b) alleged that Sergeant Calhoun told her to "open [her] phone" for him. § 87(2)(b) used her fingerprint to unlock her cell phone, and then the phone's battery died before Sergeant Calhoun could examine the phone. Sergeant Calhoun then allegedly removed § 87(2)(b)'s phone from her hand, placed it on a table, and said, "I should arrest you too because you're not showing me your phone." § 87(2)(b) was not arrested.

§ 87(2)(b) stated that the officers also told § 87(2)(b) that she needed to leave the apartment while it was being searched and that she could not take her cell phone with her. Sergeant Calhoun asked § 87(2)(b) for her cell phone, and § 87(2)(b) said she was not going to give it to him. § 87(2)(b) stated, however, that no officer asked to examine § 87(2)(b)'s cell phone. Sergeant Calhoun told § 87(2)(b) that she could not take her cell phone or keys with her because there was an ongoing investigation, and that he could arrest her for tampering with evidence if she refused to give him her phone.

Sergeant Calhoun did not recall whether he had any conversation with § 87(2)(b) about her cell phone, whether he attempted to examine her cell phone, or whether the phone's battery died. He did not recall having probable cause to arrest § 87(2)(b) for any crime aside from having marijuana in her home. Sergeant Calhoun denied threatening to arrest § 87(2)(b) because he could not examine her cell phone.

Sergeant Martin stated that after he told § 87(2)(b) that the officers were going to obtain a search warrant, § 87(2)(b) said she wanted to take her cell phone with her, and he told her that she could not remove anything from the apartment. He stated that there was no probable cause to place § 87(2)(b) under arrest. Sergeant Martin did not believe any officer attempted to examine § 87(2)(b)'s cell phone, and he did not recall hearing Sergeant Calhoun threaten to arrest § 87(2)(b) because he could not examine her cell phone.

Police Officer Stephenson stated that no officer threatened to arrest § 87(2)(b) because he could not examine her cell phone.

Police Officer Fraser had no knowledge of any officer making such a threat. None of the body-worn camera footage captures any officer threatening to arrest § 87(2)(b) for any reason.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation (E) Abuse of Authority: Sergeant Damon Martin threatened to damage § 87(2)(b)'s property.

§ 87(2)(b) stated that after § 87(2)(b) and § 87(2)(b) were placed under arrest, Sergeant Martin told her that he and the other officers were going to obtain a search warrant and then “cut up” her couches. She noted that her couches remained intact after the search.

§ 87(2)(b) also alleged that Sergeant Martin said he was going to “flip” the house and cut the couches open once the search warrant was obtained.

Sergeant Martin stated that he told § 87(2)(b) that officers will conduct their search according to the terms stipulated by the search warrant, and that things will be moved around and the apartment will be left in a messy state, but he denied telling § 87(2)(b) that he would tear or cut up her couches. Sergeant Martin noted that he could have torn into a couch if he had reason to believe that the gun could be in the couch, such as if he looked under the couch and the lining was hanging off, but he did not believe that this was the case in this incident.

None of the other officers interviewed stated that they heard Sergeant Martin threaten to cut or tear § 87(2)(b)'s couch. No threat to damage § 87(2)(b)'s couches is captured in any of the officers' body-worn camera footage.

§ 87(2)(b), § 87(2)(g)

Allegation (F) Abuse of Authority: Police Officer Tia Stephenson searched § 87(2)(b) in Brooklyn.

The investigation has determined that once the search warrant was obtained, the officers' search of § 87(2)(b) § 87(2)(b) in Brooklyn, on June 12, 2018, was conducted in accordance with valid § 87(2)(b) County search warrant number § 87(2)(b), which was signed by the Hon § 87(2)(b) (Board Review 11). The search warrant lists Police Officer Stephenson as the officer who applied for the search warrant § 87(2)(g)

Allegations Not Pleaded

- § 87(2)(b) alleged that an officer stopped his neighbor, § 87(2)(b) removed his backpack from his back, and frisked his pockets. However, § 87(2)(b) (Board Review 04) stated that Police Officer Stephenson only told him to step aside and asked him whether there was a female upstairs, and that no officer placed his or her hands on him or any of his belongings. Therefore, § 87(2)(b) is not listed as a victim of any Stop or Frisk allegations.

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) and § 87(2)(b) have been parties (Board Review 12).
- § 87(2)(b)
- Police Officer Tia Stephenson has been a member-of-service for 10 years and has been a subject in two additional CCRB complaints and two additional allegations, none of which were substantiated. § 87(2)(g)
- Sergeant Damon Martin has been a member-of-service for 20 years and has been a subject in 22 additional CCRB complaints and 52 additional allegations, of which four were substantiated (Board Review 14).
 - 200814508 involved substantiated Strip Search, Threat of Force, Retaliatory Arrest, and Stop allegations against Sergeant Martin. The Board recommended charges, and the NYPD docked Sergeant Martin 15 vacation days after he was found guilty.
- Sergeant Gary Calhoun has been a member-of-service for 25 years and has been a subject in 17 additional cases and 41 additional allegations, of which 14 were substantiated (Board Review 13).

- 9700541 involved substantiated Physical Force, Gun Pointed, Other Force, Threat of Force, Discourtesy: Word, and Offensive Language: Race allegations against Sergeant Calhoun. The Board recommended charges, and the NYPD suspended Sergeant Calhoun for 30 days after he was found guilty.
- 9802616 involved substantiated Physical Force and Retaliatory Arrest allegations against Sergeant Calhoun. The Board recommended charges, and the charges were dismissed.
- 200901903 involved substantiated Vehicle Stop, Vehicle Search, Frisk, and Search of Person allegations against Sergeant Calhoun. The Board recommended charges, and the NYPD imposed a penalty of Command Discipline – B.
- 201304366 involved a substantiated Vehicle Search allegation against Sergeant Calhoun. The Board recommended charges, and the NYPD docked Sergeant Calhoun four vacation days after he was found guilty.
- 201502560 involved a substantiated Frisk allegation against Sergeant Calhoun. The Board recommended charges, and the NYPD docked Sergeant Calhoun four vacation days after he was found guilty.

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
 - As of October 23, 2018, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint (Board Review 14).
 - According to the Office of Court Administration (OCA), § 87(2)(b) has no history of convictions in New York City (Board Review 15).
 - § 87(2)(b) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
 - § 87(2)(b) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
 - As of November 20, 2018, § 87(2)(b)s and § 87(2)(b)s court cases stemming from this incident are ongoing (Board Review 16, 17).
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Squad No.: 02

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| Investigator: | _____ | _____ | _____ |
| | Signature | Print Title & Name | Date |

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| Squad Leader: | _____ | _____ | _____ |
| | Signature | Print Title & Name | Date |

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| Reviewer: | _____ | _____ | _____ |
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